

REAL ESTATE PURCHASE AGREEMENT

BY THIS AGREEMENT, dated as of the date set forth below, the parties hereto declare, covenant and agree as follows:

1. **Definitions.** The following terms are hereby defined as set forth below for the purposes of this Agreement and shall be given such meanings wherever appearing in this Agreement unless the context requires otherwise, and subject to such further qualifications as are expressly set forth hereafter:

Buyer: City of Ankeny, Iowa, 410 West First Street, Ankeny, Iowa 50023

Seller: Bresson Construction, Inc., 9430 N.E. 26th Court, Ankeny, Iowa 50021

Closing Date: January 15, 2010, or such other date as mutually agreed between the parties

Agreement Date: December 31st, 2009

Property: The real property legally described on the attached Exhibit "A"

Purchase Price: Shall be as set forth in Paragraph 3 below

2. **Purchase and Sale of Property.** Subject to and upon the terms, provisions, and conditions set forth herein, and subject to any requirements of the Iowa Code, Seller agrees to sell and Buyer agrees to purchase the entire right, title and interest in and to the Real Estate, including all improvements and personal property appurtenant thereto (as owned by Seller) for the Purchase Price.
3. **Purchase Price.** The Purchase Price shall be paid by Seller receiving a credit toward the sewer connection fee that is required for Cherry Glen Estates Plat 6 at a cost of \$2,920 per acre by ordinance for a total of \$104,045.44.
4. **Information Delivery Items.**
 - 4.1 **Abstract of Title.** Seller shall deliver to the Buyer an Abstract of Title to the real estate. Buyer shall pay for any cost to update the Abstract of Title. Seller shall be responsible for any cost incurred to be able to convey good and merchantable title in accordance with Iowa Land Title Standards of the Iowa State Bar Association, but subject to (i) applicable zoning ordinances, and (ii) easements, restrictions and reservations of record if any.

5. **Contingencies to Purchase.** Buyer's obligation to consummate the purchase of the Real Estate and to close is conditioned upon the satisfaction or waiver in Buyer's discretion of each of the following contingencies within the applicable time periods hereinafter specified:
- (a) **Title Approval.** Buyer shall deliver to Seller a complete copy of the title opinion of Buyer's counsel; and Seller shall have a reasonable time to correct any title defects. If Buyer's objections are not cured to Buyer's satisfaction prior to the Closing Date, then Buyer may either (i) cancel and terminate this Agreement; or (ii) waive any such remaining objections and approve the condition of title to the Real Estate then existing.
 - (b) **Procedures Completed for Sale of Property.** Completion of all proceedings required by Iowa law for the purchase and sale of the Real Estate.
6. **Taxes and Assessments.** Seller agrees to pay all Real Estate taxes and assessments prorated to the date of Closing.
7. **Closing Documents.**
- 7.1 At Closing, Seller shall execute and/or deliver to Buyer the following:
 - (a) **Warranty Deed.**
 - (b) **Other Documents.** Any other document as may be required for recording this Agreement, including, but not limited to an Iowa Declaration of Value form and Groundwater Hazard Statement.
 - (d) **Possession of the Real Estate.** Actual possession of the Real Estate.
 - 7.2 At Closing, Buyer shall execute and/or deliver to Seller the following:
 - (a) **Other Documents.** Any other document as may be required for recording this Agreement, including, but not limited to an Iowa Declaration of Value form and Groundwater Hazard Statement.
8. **Prorations, Costs.** The following items shall be prorated as of the Closing between Seller and Buyer as set forth herein:
- (a) The Seller shall be charged with (i) the cost of real estate conveyance tax, if any, and other transfer taxes, if any, imposed by state or local authorities, and (ii) the cost of the continuation of the Abstract of Title.

- (b) Seller and Buyer shall each be responsible for the payment of the fees and expenses of their respective counsel in connection with the transactions contemplated by this Agreement.
9. **Remedies Upon Default.** In the event that either party defaults in their performance under the terms of this Agreement, the other party shall have all the rights and remedies available under the laws of the State of Iowa, including the right of the Seller to forfeit this Agreement in accordance with Chapter 656 of the Code of Iowa (2009), as amended.
10. **Date of Agreement.** This Agreement is being executed first by Buyer and then presented to Seller for execution. Each party shall date this Agreement beside its signature as of the date of such signature. The date of this Agreement shall be the date which is the later to occur of the date on which the Seller executes this Agreement or the date on which Buyer executes the Agreement.
11. **Miscellaneous.**
- 11.1 This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations and understandings are superseded hereby and merged into this Agreement. No party shall be liable or bound to any other person hereto in any manner by an agreement, warranty, representation or guarantee, except as specifically set forth herein or in any instrument executed pursuant hereto.
- 11.2 If any term or provision of this Agreement is determined to be invalid, such invalid term or provision shall not affect or impair the remainder of this Agreement, but such remainder shall continue in full force and effect to the same extent as though the invalid term or provision were not contained herein.
- 11.3 Time is of the essence of this Agreement. Except as herein otherwise provided, this Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, personal representatives, successors and assigns of the parties hereto.
- 11.4 The parties hereto agree to execute, acknowledge and deliver such other documents and instruments as may be reasonably necessary or appropriate to carry out the full intent and purpose of this Agreement. Notwithstanding this paragraph, the parties agree that the terms of this Agreement shall survive the Closing of the transaction. Specifically, the obligation of the parties to execute the agreement described in Paragraph 3 shall survive any earlier closing of the transaction.
- 11.5 This Agreement and the rights of the parties hereto shall be governed and

construed in accordance with the laws of the State of Iowa.

- 11.6 This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

Approved:

Bresson Construction, Inc.

By: 
Darryl A. Bresson, President

Approved:

City of Ankeny, Iowa

By: _____
Steven Van Oort, Mayor

Attest:

By: _____
Pamela DeMouth, City Clerk

Exhibit "A"

Legal Description

Lot D in Cherry Glen Estates Plat 6, an Official Plat, in Ankeny, Polk County, Iowa.